

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

MARIA DEL P SOTO ALBINO

DEBTORS

CASE NUMBER: 19-05890-EAG

CHAPTER: 13

**MOTION TO VALUE COLLATERAL AND TO DETERMINE
SECURED STATUS OF CREDITOR PURSUANT TO FRBP 3012**

TO THE HONORABLE COURT:

COMES NOW, the Debtor, through undersigned counsel, and hereby files this Motion to Value Collateral and to Determine the Secured Status of creditor, pursuant to 11 USC § 506. In support thereof, further state as follows:

1. The present motion is filed pursuant to FRBP 3012. The purpose of the same is:
 - a. For the Court to enter an order fixing the value of certain personal property owned by Debtor and which is considered property of the present estate. The same is described as follows:

2016 Toyota Yaris
Registered under debtor's name
 - b. To determine the value of the claim which is secured by a lien over said property in favor of creditor Toyota Credit de Puerto Rico.
2. The present motion does not question nor intends to determine the validity of the lien secured by said creditor over the subject personal property.
3. Debtor acquired the above described motor vehicle.
4. Debtor filed the present voluntary petition.
5. As of the date the present Voluntary Petition was filed, the market value of the subject motor vehicle was estimated in \$10,450.00. Said value was obtained from the NADA Guides web page, reflecting a value of 10,450.00 for similar models (see attached report).
6. Debtor filed a plan dated October 10, 2019. With regards to secured creditor Toyota Credit de Puerto Rico, the plan specifies that the creditor will be paid the value of the collateral plus a Till interest rate of 5.5% per annum.

7. Bankruptcy Rule 7001(2) requires the filing of an adversary proceeding in order to determine the extent of a secured creditor's lien. However, pursuant to Bankruptcy Rule 3012 **"[t]he Court may determine the value of a claim secured by a lien on motion of any party in interest..."** The present motion is filed based precisely what is predicated by **Fed. R. Bankr. P. 3012.**
8. The present case was filed more than 910 days after having purchased the Vehicle. The Code's criteria for the treatment of secured claims are set forth in 11 U.S.C. §1325(a)(5). However, in addition to the elements established by the cited section, the code also provides in 11 U.S.C. §1325(a)(5)(B) the option to cramdown the secured debt, meaning that debtor has the right to pay a secured creditor the value of its collateral.
9. Chapter 13 cramdown is comprised of two essential elements: Lien retention and Equivalent value. With regards to the second element for a Chapter 13 cramdown, 11 U.S.C. §506(a)(2) of the Bankruptcy Code states that the value of a secured creditor's interest in property of the bankruptcy estate *"shall be determined based on the replacement value of such property as of the date of the filing of the petition"*.
10. Debtor's intent, as indicated in her Chapter 13 Plan, is to retain the vehicle that serves as collateral for creditor's claim. This vehicle is necessary for the successful reorganization of the Debtor, since the same is the principal means of transportation of debtor. Accordingly, debtor is exercising the "cramdown" option for which 11 U.S.C. §1325 (a)(5)(B) provides, by paying the creditor the present value of the collateral plus a Till interest factor during the life of the plan, while the creditor will retain the lien until the secured portion of the claim is paid in full.
11. Although debtor's plan does not provide payment of the full amount claimed by Toyota Credit de Puerto Rico, the same still can be confirmed because it pays creditor the current market value of the collateral plus a Till interest factor of 5.50% as of the date of the filing of the petition, thus complying with the requirements of both 11 U.S.C. §506(a)(2) and 11 U.S.C. §1325 (a)(5)(B).

WHEREFORE, the Debtor respectfully request this Honorable Court enter an Order as follows:

- (a) Determining the current market value of the subject property to be **\$10,450.00;**
- (b) Determining that the secured portion of Toyota Credit de Puerto Rico is \$10,450.00.
- (c) Determining that the remaining amount of Toyota Credit de Puerto Rico, claim will be considered as an **unsecured portion** of the claim and as such will receive pro-rata distribution.

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING Within thirty (30) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.

CERTIFICATE OF SERVICE: I hereby certify that on this same date a true and exact copy of this motion has been forwarded by the CM/ECF system to the **Chapter 13, Trustee, by first class mail to Toyota Credit de Puerto Rico, Brett Beals, CEO, PO Box 9013, Addison TX 7500118** and to all parties in interest as per attached list.

In Ponce, Puerto Rico this, October 10, 2019.

Respectfully submitted,

/s/ Roberto L. Mateo Rivera, Esq.
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NADAguides Value Report 10/10/2019

2016 Toyota Yaris

Hatchback 5D L I4

Values

	Rough Trade-In	Average Trade-In	Clean Trade-In	Clean Retail
Base Price	\$6,450	\$7,425	\$8,225	\$10,450
Mileage (0)	N/A	N/A	N/A	N/A
Total Base Price	\$6,450	\$7,425	\$8,225	\$10,450

Options

Price + Options	\$6,450	\$7,425	\$8,225	\$10,450
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Certified Pre-Owned (CPO) ⓘ

+\$675

Certified Price with Options

\$11,125

Popular Toyota Models

Toyota RAV4
Toyota Camry
Toyota Highlander
Toyota 4Runner
Toyota Tundra 4WD
Toyota Tacoma 4WD
Toyota Corolla
Toyota Tacoma
Toyota Sienna
Toyota Avalon

Popular Toyota Vehicles

2019 Toyota RAV4
2019 Toyota Camry
2019 Toyota Highlander
2019 Toyota Tacoma 4WD
2019 Toyota 4Runner
2019 Toyota Tundra 4WD
2018 Toyota Camry
2018 Toyota Tacoma
2018 Toyota RAV4
2018 Toyota Highlander

Car Shopping Guides

10 Most Popular Midsize SUVs an...
Warning Signs You Need New Bra...
Most Reliable Crossovers and SU...
10 Most Popular Luxury Cars
2019 Vehicle Dependability: Most...
How to End Your Lease Early
10 Most Popular Large SUVs and...
2019 Vehicle Dependability: Most...
10 Most Popular Compact SUVs a...
2019 Vehicle Dependability: Most...

Cars By Price

Under \$15,000
\$15,000 - \$25,000
\$25,000 - \$35,000
\$35,000 - \$45,000
\$45,000 - \$55,000
\$55,000 - \$65,000
\$65,000 - \$75,000
Over \$75,000

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T MOBILE
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